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Supreme Court of the United States

OCTOBER TERM, 1963

No. 9

CHARLES F. BARR, ET AL., PETITIONERS,

vs.

CITY OF COLUMBIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF SOUTH CAROLINA

PETITION FOR CERTIORARI FILED APRIL 7, 1962
CERTIORARI GRANTED JUNE 10, 1963

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

Statement

Appellants Charles F. Barr, Richard M. Counts, David Carter, Milton B. Greene and Johnny M. Clark, all Negro college students then attending college in the City of Columbia, South Carolina, were arrested on the 15th day of March, 1960 and charged with the offenses of Trespass and Breach of the Peace. Appellants were tried before Columbia Recorder John L. Rice, without a jury, on the 30th day of March, 1960. Each appellant, at the conclusion of all evidence, was found "Guilty" by the Recorder on each charge and each was sentenced to pay a fine of One Hundred ($100.00) Dollars on each charge, or serve a period of thirty (30) days in jail on each charge, provided that Twenty-four and 50/100 ($24.50) Dollars was suspended on each charge.

Within the time specified by law, Notice of Intention to Appeal was duly served on the Recorder, each appellant having deposited cash bonds. Subsequently, proper appeal bonds with sufficient sureties were substituted in lieu of the cash deposits.

Thereafter, by consent, this case was consolidated with a similar appeal from the Columbia Recorder's Court and argued before Honorable John W. Crews, Judge of the Richland County Court (Criminal Division). By Order dated April 28, 1961, Judge Crews affirmed the judgment of the Recorder's Court.

Notice of Intention to Appeal was timely served upon the City Attorney.

[fol. 2]

IN THE

RECORDER'S COURT OF THE CITY OF COLUMBIA

STATE OF SOUTH CAROLINA

THE CITY OF COLUMBIA, Plaintiff,

vs.

CHARLES F. BARR, RICHARD M. COUNTS, DAVID CARTER, MILTON D. GREENE and JOHNNY CLARK.

Transcript of Trial Proceedings—March 30, 1960

The Court: Jenkins, how do the defendants plead?

Mr. Jenkins: They plead "Not Guilty", your Honor.

Mr. Jenkins: If your Honor please, I would like to say at the outset that Mr. W. Newton Pough, of the Orangeburg Bar, is associated with me in these cases.

The Court: That is perfectly agreeable.

Mr. CARL D. STOKES, being duly sworn, testifies as follows:

Direct examination.

By Mr. Sholenberger:

Q. I believe your name is Carl D. Stokes?

A. Yes.

Q. Now, Mr. Stokes, you are a member of the South Carolina Law Enforcement Division?

A. Yes, sir.

Q. Commonly known as SLED?

A. Yes, sir.

Q. How long have you been with that department?

A. I was commissioned in 1956.

Q. Had you had any prior police experience?

A. I worked with SLED while attending the University.

Q. As a result of your connection with SLED, were you at the Taylor Street Pharmacy in the County of Richland,

State of South Carolina and the City of Columbia, on the 15th day of March, some time during the day?

A. I was, sir.

Q. What time of the day was it?

A. We went down about 10:30 I believe, in the morning.

[fol. 3] Q. All right, sir, why were you there?

A. Well, the first part of the morning when I went to work at Headquarters, I was informed by Chief Strom to come to Police Headquarters and assist them in anything that they needed our assistance.

Q. Had you had information that there might be something occurring at the store?

A. Well, I didn't have information. I came down and met with the police officers and was assigned to work with Detective Cannon and Deputy Sheriff Mustard.

Q. That's a County Sheriff?

A. Richland County Sheriff. We were informed then that something may occur at the Taylor Street Pharmacy and we were assigned to work at the Taylor Street Pharmacy, and that's the reason we were there.

Q. All right, Mr. Stokes, while you were there, please tell this Court just what took place in regard to these five defendants who have plead "Not Guilty"?

A. Approximately 12:35 the defendants, all five of them, came into the Taylor Street Pharmacy. Deputy Sheriff Mustard and myself were inside. I believe a couple of them stopped at the card counter and the others proceeded on back and eventually all five of them went back to the counter and sat down. The luncheon counter.

Q. Did they sit on stools?

A. Well, the counters are in a half moon shape, or similar to what we have here, and they sat at the counter. On the stools at the counter. Four of them sat at the first counter and one I believe, went over to the second counter.

[fol. 4] Q. All right, sir, were there any other people sitting at the counter?

A. Yes, there were other customers there eating.

Q. What took place then?

A. Whenever they sat down, the owner, Mr. Terry, came back and at the entrance of the lunch counter, it is partitioned off from the rest of the store. Well, at the entrance

of the lunch counter he made the statement to the five, that he wasn't going to serve them, that they would have to leave. I requested Mr. Terry—

Q. Just a minute. After he requested them to leave, did they get up and leave?

A. No, sir, they never turned around. They just sat there at the counter.

Q. In other words, they didn't pay any attention to his request?

A. They didn't do anything.

Q. What happened then?

A. I requested that Mr. Terry go to each individual and ask him to leave, in my presence, and he went to each one and asked him to leave, that he wasn't going to serve them. Each one turned and looked at him but they never said anything, and after he had told all five of them, he turned and started out back from the luncheon portion of the store.

Q. After he had asked each one individually, did any of them attempt to leave?

A. No, sir.

Q. All right, go ahead?

A. When he started out of the luncheonette, I believe Carter got up, stood up and asked Mr. Terry if he could ask him a question. Mr. Terry said that he had no comment [fol. 5] to make, that they would have to leave.

Q. That was the third time then that at least he asked Carter to leave?

A. Yes. Whenever Carter stood up to ask a question, he took a couple steps and he stopped and the other four stood up as though they were going to follow Carter out. Carter then turned around and motioned for them to sit back down and they sat back down and sat there. I might add too that they had books, some type of books.

Q. What did you do then?

A. Well, I gave them, I couldn't say exactly how long, but several minutes, after Mr. Terry had left the section, to see what they were going to do and they just sat there. The customers began to stand up and leave their dinners on the counter, so I went back—there were two on one

corner and one on the other corner of the second booth. I walked in the middle of those and told them, I believe the words I used, that I was a State officer and they had been asked to leave and they didn't so they were under arrest. That's when they got up and followed us out.

Q. Did you bring them down here to headquarters?

A. They followed Deputy Sheriff Mustard to the front of the store where three of them were placed in one police car and two in the other, because we didn't have room for all five of them in one car, and we brought them to police headquarters.

Q. Do you know anything else about this case?

A. That's all I know about it.

By the Court:

Q. That happened in Richland County, South Carolina?

[fol. 6] A. Yes, sir.

Mr. Sholenberger: I asked him that to begin with.

Cross examination.

By Mr. Jenkins:

Q. You are Mr. Stokes?

A. Stokes.

Q. Now this occurrence that we are concerned with today, took place on March 15th?

A. March 15th.

Q. Now you have testified, Mr. Stokes, that you were at the Taylor Street Pharmacy on March 15th?

A. Right.

Q. In an official capacity?

A. Right.

Q. Now would you state to the Court your reason for being there?

A. As I stated before, I had orders from my Chief to come to police headquarters and assist the police department, not only myself but other officers from my department. We met here with them and upon information they had. I was assigned to work with Detective Cannon and Deputy Sheriff Mustard at the Taylor Street Pharmacy.

Q. I believe you testified on direct examination that you were informed, I believe that's the word you used, that something would happen at Taylor Street Pharmacy?

A. We were told at the meeting, yes, sir.

Q. Would you tell the Court what was your information as to what was to occur?

A. They told us a sit-down demonstration was to occur at the Taylor Street Pharmacy.

[fol. 7] Q. And were you assigned there to prevent the sit-down demonstration?

A. I was there to prevent any violence that might come from the sit-down demonstration, from either race, whether it be White or Colored.

Q. I didn't hear the last part?

A. To prevent any violence at all that might occur from this sit-down.

Q. Is that your only reason for being there?

A. That was the reason we were assigned there.

Q. Did you have any other reason for being there other than to prevent some violence which may occur?

A. Other than Chief Strom informed me to come down here, or ordered me to come down here and assist the police department.

Q. Now you were in the store when these five defendants came in?

A. I was.

Q. Taylor Street Pharmacy is a very popular store. Is that correct?

A. I don't know how popular. It's open 24 hours a day.

Q. I believe its radio program advertises that. Have you ever heard it?

A. I don't know if they have a radio program but I think they advertise a good bit.

Q. Now you were there when these five defendants came in?

A. I was.

Q. Did they come in in a group or separately?

A. They came in single file. In fact, there is a door—one door leads into the store and one leads out of the store, more or less from the cash register counter, and

I couldn't say all of them but several of them went through [fol. 8] what I would call the exit door, to enter the store.

Q. You observed the manner and demeanor of these defendants?

A. I was trying to observe everybody.

Q. Were they orderly when they came in?

A. Oh, yes, they were orderly.

Q. They created no disturbance of any kind?

A. No disturbance at that time.

Q. Now were there other customers in the store at that time?

A. There were.

Q. A large number or one or two?

A. Do you mean in the whole store?

Q. The whole store?

A. It's a pretty large store. There were customers but I don't know exactly how many. There were several eating in the lunch part and several in the other parts.

Q. What part of the store were you stationed in when these defendants came in?

A. I was up at the front part of the store.

Q. At that time could you see from the front of the store, to the lunch department?

A. I could see the partition which comes up to about my shoulders, I could see that part, and I could see in the back of the store.

Q. Now when these defendants came into the store, did they in any manner interfere with any of the other customers in the store?

A. How do you mean by interfere?

Q. Did you observe them interfering physically?

A. No, they went in and sat down. That's all they did.

[fol. 9] Q. When they first went in the store, we haven't reached the part when they were in the lunch department?

A. They walked in, and as I stated before, I believe a couple of them stopped at the card counter where you buy birthday cards, etc.

Q. Did the entrance of these defendants into the store, arouse any particular concern or interest on the part of the customers there?

A. When they first entered the store? No.

Q. Nobody paid them any particular attention?

A. Not that I could tell.

Q. So it didn't seem out of the ordinary that the defendants would enter the store?

A. No.

Q. Now you said that shortly after entering the store, they proceeded to the lunch department?

A. They proceeded back to the luncheonette.

Q. Were there any other people in the lunch room department of the Taylor Street Pharmacy when these defendants came in?

A. There were.

Q. Do you know whether there were several or a large number?

A. There were several. At the first counter I believe maybe five and the other counter was approximately the same amount. I didn't count how many there were, but there were a few empty seats. I'll put it that way.

Q. I am not familiar with the lunch room department of the Taylor Street Pharmacy but I believe you said there was crescent shaped counter?

[fol. 10] A. There were three crescent shaped counters similar to what we have here. The waitress would go in between the middle portion to take orders.

Q. Do you know approximately how many stools there are?

A. I don't know how many.

Q. When these defendants came in on March 15th and proceeded to the lunch room department, there were vacant stools were there?

A. Yes.

Q. These defendants seated themselves on the stools?

A. Say this is the first counter, one sat here and one up there and I believe two over here and on the second counter one sat by himself.

Q. Did they all sit down simultaneously, or some sat down and others were standing?

A. One came to this one, one to that one and the other one walked around.

Q. Do you remember whether any of them had to look around to see if there were any vacant stools?

A. As well as I remember, they walked in to the entrance of the luncheonette section similar to the aisle here. They walked straight in the aisle and one came to this side and the others went over that way. They didn't hunt for a seat.

Q. Did they place any order for food while sitting there?

A. No, they did not.

Q. Did anyone approach them to your knowledge, to inquire as to whether they wanted to place an order for food?

A. Not to my knowledge. Before they came in, the manager or the owner, Mr. Terry, had told me that he [fol. 11] wasn't going to serve them and that he wanted them out of his store, if they came back.

Q. That was prior to the defendants ever getting there?

A. That was prior to their entering.

Q. So then one of your purposes in being at the Taylor Street Pharmacy was to prevent these people from seeking service?

A. No.

Q. Well, what effect did the information given you by Mr. Terry, have on you?

A. It gave me; I wouldn't say a reason, but it more or less gave me something to look out for. If they were to come back, then I could look out for maybe someone else interfering and causing some violence. He had informed us that if they came, he wasn't going to serve them.

Q. Did Mr. Terry give you the impression that he expected some violence to occur if they came in?

A. I didn't come to any conclusion or observe any impressions that he had.

Q. When these defendants sat at the counter, did they sit there as ordinary customers would sit?

A. Well, I don't think an ordinary customer would come in and place their books up where a plate would be or where you would be eating dinner from, and leave it there.

Q. Mr. Stokes, during the time you were in school, certainly you carried books with you sometimes?

A. Sure.

Q. Did you ever carry books into the cafeteria or lunch-room?

A. If I did, I would leave them at the door.

[fol. 12] Q. I mean, with reference to you?

A. Excuse me, speaking of myself, or my hat, I wouldn't carry them to the counter, I would leave them in the car or if I was walking I certainly wouldn't place them on the counter. If I had to take them to the counter, I would place them on the floor beside me.

Q. It is quite possible however, that these defendants may have wanted to preserve their books much more so than you wanted to preserve yours. That's possible, isn't it?

A. Oh, yes, it's possible.

Q. So that they may not have just wanted to throw their books down on the floor?

A. I wouldn't throw mine either.

Q. At the lunch counter, were there any provisions for putting books and other packages which a customer may have?

A. I didn't observe the structure of the counter.

Q. It is not so unusual that if a person came in to a lunch counter and had his books with him, it is not so unusual that he would place them on the counter is it?

A. Well, I don't know what is usual or unusual but to me, if I were sitting by someone else who is eating, it certainly wouldn't be proper for me to place my books beside them eating, where I would expect to be served.

Q. Did they place their books in front of them or scatter them all over the counter?

A. Their books were placed—

The Court: Counsel, I would like to make this observation. You are going rather far afield. I want to stick to the issue involved in the case but I don't want to shut off any pertinent testimony, but at the same time I don't want [fol. 13] to go into matters that are irrelevant and not germane to the issue. Whether they put their books on the floor or on the table, I don't think has a thing to do with it frankly.

Mr. Jenkins: I believe, if your Honor please, it started off trying to find out from this witness whether the de-

meanor of these defendants, when they entered the lunch-room, was any different from that of any other customer.

The Court: But he testified that their demeanor was not any different from any of the others.

Mr. Jenkins: He testified, if your Honor please, that they put their books on the counter, and to him that seemed a bit unusual, so I was merely trying to find out whether that was the ordinary thing that students with books would do when they entered.

The Court: I think he's testified enough about the books.

Q. There were other customers in the lunch room when these defendants came in?

A. There were.

Q. Were they White or Negro?

A. They were White.

Q. These defendants of course are Negroes?

A. Right.

Q. Now these defendants seated themselves at the lunch counter, and did they sit by any persons other than themselves?

A. If I remember correctly, the one that came to this side sat between—sat by a White lady. The one that sat at the other counter sat between two men. The other two sat at two empty seats together, with a White man on each side of them.

[fol. 14] Q. Do you recall what those other customers were doing when these defendants came in?

A. They were eating. The White lady had a plate in front of her and the others were eating. When they sat down, the White lady and a couple men on this side stood up and left their plates.

Q. Are you certain now that they just stood up immediately when these defendants came in?

A. Yes. I don't say when they came in but when they sat down.

Q. Did you see anyone directing either of these persons to stand up?

A. Which persons?

Q. These other customers that stood up when these defendants came in?

A. Did I see anyone directing them to stand up?

Q. Yes?

A. No.

Q. You are certain now with reference to the lady, that no one invited her to move?

A. No. I mean, when they sat down, she jumped up, or stood up.

Q. Now the other customers who were seated there, they continued to sit?

A. Some of them.

Q. Some got up and some continued to sit?

A. Yes.

Q. To some, it didn't seem any undue occurrence, that these defendants came in and sat down to eat?

A. I don't know about that.

Q. Now you testified that some person from the store, I believe Mr. Terry, came over and said what to these defendants?

[fol. 15] A. He stood at the entrance to the luncheonette and told them that they would have to leave, that he wasn't going to serve them.

Q. About how long had they been there when he told them that?

A. They had come in and had been seated.

Q. Mr. Terry didn't say anything to them prior to their sitting down?

A. No.

Q. Now in the beginning, you had been at the front of the store when these defendants came in. Did you just follow them on to the back?

A. Since I was in the store, I had been wandering around by myself looking at different articles on the counter, and observing different people.

Q. I mean, from the time these defendants came in, I believe you testified you were at the front of the store?

A. I was at the front of the store.

Q. So you just followed them on back to the lunch counter?

A. I wouldn't say I followed them but I walked on back.

Q. Not very long after they got there?

A. Right.

Q. Now then, they were asked to leave by Mr. Terry and they refused to leave?

A. That's right.

Q. Did he give them any reason for refusing to serve them?

A. I don't recall whether he gave them a reason. All I remember him saying to each one of them, that he wasn't going to serve them and they would have to leave. The [fol. 16] reason for him telling them to leave I reckon was because he wasn't going to serve them.

Q. I merely asked you whether or not you heard him give them a reason?

A. Well, the reason I think that he asked them to leave was because he wasn't going to serve them. I mean, that's what I heard. Not what I think but that's what I heard.

Q. Of course I didn't ask you what you think about it. I merely asked you did you hear him?

A. That's the reason I say it's not what I think, it's what I heard.

Q. What were you doing during that time while Mr. Terry was talking to these defendants?

A. He first made the statement to all of them in a group.

Q. You were doing what then?

A. I was standing by him. I had come up by him.

Q. Was your purpose in standing by him to assist him in refusing service to these defendants?

A. No, I was there to prevent violence.

Q. Up to that point was there any indication of violence?

A. No.

Q. As a matter of fact, throughout the entire incident was there any indication of violence?

A. The only incident that I figured violence might come from was when they sat down and the customers stood up, and I didn't know what was going to come off. I couldn't read their minds or anyone else's in fact.

Q. Did the customers stand in a threatening manner or just stood up as though they didn't want to sit by these persons?

[fol. 17] A. I wouldn't know exactly how to interpret the standing up, in a threatening manner.

Q. Well, we are not going to be too technical about the word threat, but did they just stand up in an ordinary manner?

A. Some word like threat could mean a lot.

Q. Now then, since we seem to have some question about the meaning of words and attitudes and things of that sort, you were there to prevent violence?

A. I was there to prevent violence, was my main purpose.

Q. Would you know what violence means?

A. When someone would maybe hinder someone else. Violence could be interpreted as fighting.

Q. Would a threatening manner tend to lead toward violence?

A. I would think so.

Q. Now the manner in which these persons stood up, would that manner in your opinion tend to lead toward violence?

A. As I stated before, when they sat down and the others stood up, the word you used before was simultaneous, that would apply in this case.

Q. Did they stand up or leave the area?

A. They stood up and the one on this side backed up to the wall. The others got in the corner.

Q. I asked you this before but I'll ask you again. Throughout the entire incident, there was in fact no violence, was there?

A. No violence.

Q. And there was no threat of violence was there?

A. No, other than maybe when they stood up. I didn't want anything to happen.

[fol. 18] Q. So, as it worked out, except for your assisting the manager in arresting these persons, you need not have been there. Is that true?

The Court: I don't think that's germane. He's testified why he was there, under orders of his superior and I think that's sufficient on that.

Q. You, after Mr. Terry had told the group to leave, suggested to him that he tell each one individually?

A. Right.

Q. State your reason for doing so?

A. Why I asked him to have them leave?

Q. Yes?

A. As I stated before, he had informed me that he wasn't going to serve them and that he wanted them out of his store. All right, after he had made the statement to all of them, they sat there like maybe they didn't hear him. The others had started to get up, the White customers stood up, and the reason I asked to tell them again so that they would know that he wasn't going to serve them and wanted them to leave.

Q. In fact, you were assisting him in refusing them service and asking them to leave?

A. I wouldn't say I was assisting him.

Q. What was your point in being certain that they heard him?

A. So that whenever they didn't leave and they had been asked to leave, well I heard him ask them to leave and they ignored him. He's the owner of the store and as I said, my purpose was there to prevent violence, but at that particular point they refused to leave and it seemed to me another law was being broken.

Q. What was that law?

A. They were trespassing.

[fol. 19] Q. Are you familiar with the trespass law?

A. No, I don't say I'm all familiar with it.

Q. It was an ever present factor in your mind that day?

A. I wouldn't say it was ever present. I tried to keep all the laws. I don't say all of them but I try to keep most of them in my mind.

Q. You did however, assist the manager in refusing service to these defendants, didn't you?

A. I won't say I assisted him in refusing service.

Q. You assisted him in evicting them from his premises?

A. As it turned out, I did.

Q. And you made the charges against them did you?

A. The warrant charges them with trespass and breach of the peace.

The Court: Let me ask counsel to try to be a little more brief. I want everybody to be heard but at the same time I don't want to draw this out too long. There are a good many other witnesses, both on behalf of the prosecution and

the defense and I just don't want to draw it out too long, so make it brief and to the point.

Q. Mr. Terry, did he request that you arrest these defendants?

A. No.

Q. Did he request that you evict them from his premises?

A. You mean at that time?

Q. At any time?

A. No. He did state before that he didn't want them in his store.

[fol. 20] Q. And did he go further and say: "If they come in my store, I want you to arrest them" or words to that effect?

A. No, I won't say he said that.

Redirect examination.

By Mr. Sholenberger:

Q. In other words, you went there for the purpose of preventing something which you didn't know for sure what might happen?

A. That's correct.

Q. You didn't know what might happen under these circumstances?

A. No, I didn't.

Q. That's why you were there as a Peace Officer for the State of South Carolina?

A. Yes, sir.

Mr. JOHN M. TERRY, being duly sworn, testifies as follows:

Direct examination.

By Mr. Sholenberger:

Q. Mr. Terry, you are the owner of the Taylor Street Pharmacy in the City of Columbia, are you not?

A. I am a Co-Owner.

Q. You actually manage the place?

A. Yes, sir.

Q. All right, sir, on March 15, 1960, did you have occasion to see these five defendants in your place of business?

A. Yes, sir.

Q. Just go ahead and tell the Court what they did when they came in your store. Did you see them when they came in?

A. Yes.

[fol. 21] Q. What did they do when they came in?

A. Well, just the same testimony as Mr. Stokes gave, they went back to the lunch department, through the store and back to the lunch department. Four of them sat at the first counter and one at the second counter, and I went back and asked them, or told them I would not serve them and asked them to leave, and Mr. Stokes then requested that I ask each one individually, which I did, all but one, and the luncheonette manager asked him and they refused to leave, and I left the department, with the law enforcement officers there.

Q. Do you recall David Carter coming up to you and making a request?

A. He got up and started towards me, and said "Sir, could I ask you a question", and I directed the luncheonette manager, Mr. Cothran, to tell them to leave.

Q. You say he left the lunch department?

A. He left the lunch department and started toward the front, and I left the law enforcement officers to enforce the law.

Q. Had you informed Mr. Stokes prior to the defendants coming in, that you were not going to serve them, and that you wanted them to leave?

A. That's correct. I was informed on Monday that they would be there at 12:35 Tuesday, under their plans, etc.

Q. In other words, Mr. Terry, you didn't know what might happen?

A. That's correct.

Q. Mr. Terry, is it or is it not your policy to serve food to persons of the Negro Race?

A. We do not serve Negroes at our lunch department.

[fol. 22] Q. Has that been your policy?

A. That's been the store policy.

Cross examination.

By Mr. Jenkins:

Q. Mr. Terry, how long have you operated the Taylor Street Pharmacy?

A. At the present location or across the street?

Q. Your present location?

A. It will soon be four years.

Q. Prior to that you operated across the street how long?

A. Approximately six years.

Q. The Taylor Street Pharmacy advertises itself as being a complete department store, or something to that effect?

A. That's correct.

Q. You have many departments?

A. That's correct.

Q. Including a lunch room department?

A. That is a separate department, yes.

Q. It's one of the departments in your store?

A. It is a separate department in our store.

Q. When you say separate, would the drug department be a separate department?

A. Well, the reason I mention separate department, we have two City licenses at Taylor Street Pharmacy, the luncheonette is one and the front area is another.

Q. That clarifies it. You in the operation of your store, cater to the public generally don't you?

A. That's correct.

Q. Irrespective of race?

A. In the front area, that's correct, the Taylor Street Pharmacy department.

[fol. 23] Q. Now tell me what you mean when you qualify your answer by saying you cater to the public generally in the front area irrespective of race?

A. I just explained to you we have two city licenses. We have the Taylor Street Pharmacy license to operate and we have the Taylor Street Pharmacy luncheonette license to operate.

Q. And you call the entire area other than the luncheonette, the front area?

A. The front area of the store, yes, sir. That includes everything other than the luncheonette.

Q. These defendants are Negroes aren't they?

A. I would think so. They look like it to me.

Q. What we generally accept as Negroes?

A. Yes.

Q. Do you have Negroes trading in your store?

A. Yes.

Q. One or two, or in large numbers?

A. I think quite large numbers.

Q. So quite a bit of the income from your store comes from Negroes?

A. Quite a bit.

Q. You don't hesitate to give them service do you?

A. In the front area, definitely not.

Q. As a matter of fact, you invite them in don't you?

A. That's correct.

Q. Just like any other member of the public, you invite them in?

A. That's correct.

Q. You don't invite them into the luncheon area. I mean Negroes?

A. We do not.

Q. Under any circumstances?

[fol. 24] A. If they request it, we will fix an order to go for them, at their request.

Q. So Negroes can then come into the back area, I guess I'll call it, the luncheon area, and receive food service?

A. Food service to go.

Q. Do any of them make such requests?

A. Some.

Q. Large numbers or just scattered?

A. I think it would be very minute.

Q. Do you ever recall seeing any of these defendants, other than on March 15th, 1960, order any food from the lunch counter?

A. No, I haven't. I mean, I don't recall seeing them because I'm not there all the time. I don't remember them.

Q. Is there any public notice given by you that you do not serve Negroes generally in the luncheon department?

A. I beg your pardon?

Q. You say you do not serve Negroes generally in the lunch department?

A. That's right.

Q. Other than they may come in and order food to take out, you do not serve them?

A. That's correct.

Q. That's the policy of your store?

A. I have Negroes on my payroll in the kitchen department.

Q. I'm talking about customers. Now then you testified that your policy is with reference to the food service, not to serve Negroes other than they may purchase food to take out?

A. If they request it, we will fix it for them.

[fol. 25] Q. Now I ask you, is there any public notice provided by you that you do not serve Negroes in the lunch counter, other than they may purchase food and take it out?

A. I never have advertised in any way on the lunch department.

Q. So there is no public notice then that you do not serve them?

A. I have the public notice that I can refuse to serve anyone in that department.

Q. You do have a public notice to that effect?

A. It's a sign there.

Q. You do have occasion to refuse to serve people other than these defendants?

A. Definitely.

Q. For your own personal reasons?

A. I don't think my personal reasons are involved in this case, are they?

The Court: No, that's correct.

A. But for business reasons or personal or any way you put it, I feel that I have a right to refuse to serve anyone.

Q. That's what I asked you. There's no argument about that. Now on March 15, 1960, you testified that you knew that these defendants or some others would come into your store?

A. I didn't know that. I was informed on Monday,

that a demonstration was planned for the Taylor Street Pharmacy at 12:35. Didn't say what date.

Q. Based upon your information you then asked the assistance of the police department and other police officers?

A. That's correct.

[fol. 26] Q. And the police officers who were in your store on March 15, 1960, were there at your request?

A. Well, I would say yes or no. I mean they came and informed me of the demonstration and we were working as a group. I'll put it that way. I didn't call them to come around and inform me. They informed me in advance.

Q. When you say working together, you requested their assistance in preventing this demonstration?

A. Not necessarily a demonstration. Any type of violence could erupt or anything, against my store policy. It could create violence.

Q. Anything against your store policy, you then wished the officers to assist you in preventing?

A. That's correct.

Q. So you then requested their assistance?

A. I would put it that way, yes. I wanted them there. Let's put it that way.

Q. And did you observe these defendants when they came into your store?

A. Yes.

Q. Did any of them make a purchase in the store?

A. Not to my knowledge at that time.

Q. You were some place near the lunch counter when they came in?

A. I was up in the front area.

Q. But you saw them when they went to the lunch counter?

A. Correct.

Q. And you immediately came back?

A. That's right.

Q. Did you see them when they took seats?

[fol. 27] A. Well, immediately after. I was following them back there through the aisleway and I immediately proceeded on back.

Q. Did they physically interfere with anyone on the way to the lunch counter?

A. Not to my knowledge.

Q. After they reached the lunch counter did they physically interfere with anyone?

A. Not to my knowledge.

Q. They were generally orderly?

A. That's correct.

Q. Were they neatly dressed?

A. I would think so.

Q. Their appearance then was generally that of any customers, other than the color of their skin?

A. That's right. They were carrying books.

Q. The seats that they took were vacant? There was nobody on the seats that they took?

A. That's correct.

Q. They didn't interfere with anybody that way?

A. That's correct.

Q. Did they order any food while in your store?

A. No, they didn't.

Q. Did anybody approach them to ask for an order?

A. No, they didn't.

Q. How long after they sat down did you come up and request them to leave?

A. Very briefly.

Q. So they really didn't have time to order, did they?

A. I didn't give them time actually because I wasn't going to serve them.

Q. Suppose they had stood up when you requested them, and then requested food to take out, would you have served them?

[fol. 28] A. If they had moved on to the side without creating any disturbance, which they had already created. If they had demonstrated, I would not have, if they came in there for the express purpose of demonstrating, which I feel sure they did.

Q. I'm trying to get your answer to my question?

A. I don't think I would have. Not these five, no.

Q. You wouldn't have served them?

A. No, or anyone else who comes down there and causes a disturbance.

Q. But any other Negroes coming in there and walking up and ordering food to take out, you would serve them?

A. If they request it I will fix an order to go, yes.

Q. Now your only reason for refusing them service was the fact that they sat down. Is that right?

A. Well, we've been through that already.

The Court: We won't have any demonstrations in the courtroom. (Some commotion in the rear of the courtroom.) I think he has answered that, counsel.

Mr. Jenkins: If your Honor please, I don't know the answer he gave.

A. What was your question again, please?

(Question read.)

A. That's correct.

Q. That and the fact that they were Negroes?

A. That's correct.

Q. Now Mr. Terry, after they sat down and refused to move, did you request any police officer to arrest them?

A. After they sat down.

Q. You told them to move and they refused, did you ask them then to arrest them?

[fol. 29] A. We had a previous agreement to that effect, that if they did not leave, they would be placed under arrest for trespassing.

Q. You had already agreed with the Police Department—

A. If we had a demonstration, if we requested them to leave and they refused, then they would be arrested.

Q. So in fact you had instructed the Police Department to arrest them if they refused to leave at your request?

A. Not necessarily, I had instructed them but that was an agreement pertaining to the law enforcement division.

Q. You let the police department know that that was your wish?

A. That I would not serve them.

Q. And if they did not leave when you asked them, you wanted them arrested?

A. That's correct.

Q. Other than the fact that they came in and sat at the lunch counter, they created no other disturbance did they?

A. When they sat down they created a disturbance, yes. You could have heard a pin drop in there, especially two

weeks before that or whatever time before that, a large number came in, it just completely stopped everything.

Q. Did you notice the behaviour of any other customers who were seated at the lunch counter when these defendants came in and took seats?

A. I think everyone was on pins and needles, more or less, for fear it could possibly lead to violence.

[fol. 30] Q. I have in mind the fact, did you observe them continue to eat or get up and leave, or just what did you observe the other customers doing?

A. Just a brief observation, I think a couple of them got up and left their food on their tables, and the rest were just watching to see what was going to happen.

Q. They didn't move. They sat where they were?

A. That's correct. Some of them moved, yes.

Q. Did you request any of the other customers to move?

A. No, I did not.

Q. To your knowledge, did anyone else employed by the store, request any of the customers to move?

A. No, not to my knowledge.

Q. Was it your idea to have these defendants arrested, or was it the idea of the police department?

A. I'll put it that it was the both of us' idea, that if they were requested to leave and failed to leave, and given time to leave, that they would be arrested.

The State rests.

The Court: Is there any testimony on behalf of the Defendants?

Mr. Jenkins: Yes, your Honor, if you will indulge me for just a minute.

Mr. David Carter, being duly sworn, testifies as follows:

Direct examination.

By Mr. Jenkins:

Q. You are David Carter, one of the defendants in this case?

A. That's correct.

[fol. 31] Q. You are one of those persons who on March 15th, 1960, went into the Taylor Street Pharmacy?

A. Correct.

Q. In Columbia, South Carolina?

A. Right.

Q. In your own words, please relate to the Court what took place on that day?

A. On March 15th, around 12:35, five of us entered the Taylor Street Pharmacy. As we entered the store, I glanced to my left and I saw the Deputy standing on the side of the store. As we started toward the back, I saw Mr. Stokes coming from the back. They stopped and looked at some cards. We moved on to the back of the store, to the luncheonette section.

Q. May I interrupt you just a minute. What was your purpose in going into the Taylor Street Pharmacy that day?

A. The purpose of going into Taylor Street Pharmacy that day was to be served.

Q. When you say "served"—

A. Served food. Being a part of the general public we felt we had a right there, and we still feel we have a right there.

Q. Did you have in mind making any purchases other than food?

A. Not that particular time, no.

Q. Had you been in Taylor Street Pharmacy previous to this?

A. Yes, I have.

Q. Made purchases there?

A. I've made several purchases there, plus I had checks cashed there.

Q. Have you ever made any purchases of food there?

[fol. 32] A. No, I never purchased food there.

Q. Go ahead with your account?

A. As I said, I saw Mr. Stokes coming from the back, I moved on to the back and immediately I took a seat at the lunch counter beside a White lady. At that particular time, I called him the Cashier, it could have been the luncheonette manager, came to the lady and said: "Get up, we'll get them out of here."

Q. May I interrupt you? Is it your testimony that an employee of the store came up to the person sitting there and made a statement to them?

A. That's my testimony, said to the lady: "Get up, we'll get them out of here", so he caught the lady by the hand and assisted her in getting up.

Q. Prior to that time had this lady made any indication that she would get up?

A. The lady made no indication at all. She sat there and began eating just as if I was a human being sitting beside her, which I was.

Q. Now will you continue?

A. Then about that time the Deputy Sheriff, I think it's the Deputy. Am I right? The Deputy Sheriff came back and he stood beside this luncheonette manager, not Mr. Terry, and he said to me—the luncheonette manager said to me: "You might as well leave because I ain't going to serve you".

Q. Did you leave?

A. No I didn't because he didn't ask me to leave. He said: "You might as well leave because I'm not going to serve you."

Q. Suppose he had asked you to leave, would you have left?

A. Had he asked me to leave, I would have left and to go on with my testimony, he went to Mr. Counts there and [fol. 33] said the same thing: "You might as well leave because I ain't going to serve you." Then he did not turn to Mr. Stokes but he turned to the Deputy and said: "I've asked them to leave". So then I bowed to Counts and Counts bowed to me and we stood up. Then I said to the luncheonette manager: "Sir, may I ask you a question?" and at that time Mr. Terry said: "No, don't answer him." He said: "No, I don't want to talk to you" so I said: "Thank you, sir" and I turned to walk away. When I turned to walk away I looked back and no one had gone to the other three boys yet, so they were about to leave and I told them to just sit until somebody asked them to leave, and then I turned to walk away and the Deputy patted me on the shoulder and said: "Just a minute please." I said: "Thank you, sir" and I just stood there and waited, and after a while he led me on out and we got in the car and they brought us down to the jail.

Q. Were you told while in the store, that you were under arrest?

A. I was not told that I was under arrest. Mr. Stokes got in the car we were in and he said: "I suppose you boys don't know who I am." Then he pulled out his credentials and said: "I am Mr. Stokes from SLED." I said: "Well, good." I said to him: "It's a very good day isn't it? The weather certainly has changed." He didn't say a word but the other man driving the car said: "Yes it has." They did not tell me that we were under arrest until we got to the jail. However, I knew we were under arrest. I assumed it because they were carrying us down. Yes I did for this reason, when I got in the car and saw the News Reporter, and I called for the News Reporter, and the man who was driving the car, whoever it was, I don't know, I said: [fol. 34] "Who are you talking about? The young man there?" He pointed to Mr. Stokes. I said: "No, not him, I'm talking to Mr. Bill Handle" so he said to Mr. Stokes: "He wants the News Reporter." Mr. Stokes said: "No he doesn't, he wants to go to jail", so I knew then I was under arrest.

Q. Did you observe any conversation between any employee of the Taylor Street Pharmacy and any of the arresting officers up there?

A. At that particular time no, because I don't remember seeing Mr. Terry until I turned to the luncheonette manager and asked him a question. At that particular time he was very emotional and said "No." Whether he conversed with any of the other officers, I don't know.

Cross examination.

By Mr. Sholenberger:

Q. You are David Carter?

A. That's correct.

Q. I believe you stated to your counsel that your purpose for going to the Taylor Street Pharmacy was to sit down at the lunch counter and be served food?

A. Be served food, correct.

Q. And of course it was also your purpose, if you did that and it led to your arrest, why you wanted to be arrested. Is that correct?

A. Oh I wouldn't say I wanted to be arrested. No one wants to be arrested. I wanted to be served.

Q. You went there with the idea that you would be arrested?

A. I went there with the idea of being served. I did not go with the idea of being arrested but I had been promised that I would have equal protection in that store or any other store.

[fol. 35] Q. Who promised you that?

A. The City Manager. There were five of us went down to City Hall.

Q. He promised you?

A. Listen to me now. Five of us went to the City Hall one day to see the Mayor. The Mayor was not in. We then talked with the City Manager, who was very polite to us. He said to us: "Gentlemen, further demonstrations will not be tolerated." We said: "Mr. McNayr, what would you do to stop such demonstrations?" He said to us: "If you are going to go down, I don't object to nobody—"

Mr. Sholenberger: This is all hearsay, your Honor.

The Court: I'm going to strike that out. You see, you have to answer counsel's questions.

A. I'm answering his questions—

The Court: We don't want any speech here. We're not going to tolerate any great big speech.

Mr. Jenkins: Your Honor, I want the record to show that counsel opened the door for this type of testimony.

The Court: He didn't open the door for any hearsay testimony. I'm going to rule hearsay testimony out, definitely. I rule it out right now. Ask him the questions.

By Mr. Sholenberger:

Q. But you did have an idea when you went there, that if you were asked to leave and you didn't leave, that you would be arrested?

A. Well, my intentions were to leave when we were asked properly to leave.

Q. Now, did Mr. Terry, the owner and proprietor of the store, ask you to leave?

A. No, sir, he did not ask us to leave.

Q. Do you deny he asked you to leave?

[fol. 36] A. I certainly deny he asked us to leave.

Q. You deny completely, in the face of his testimony and in the face of the testimony of the officer, that he asked you to leave?

A. I do.

Q. You deny that?

A. That's right.

Q. Well, why did you leave?

A. Why did I leave?

Q. Yes?

A. Because the luncheonette manager said: "You might as well leave, I ain't going to serve you." Then he looked to the Deputy and said: "I've asked them to leave." There was no point in sitting there.

Q. Didn't you leave because the manager told you—the man from SLED told you to leave?

A. The man from SLED did not tell us to leave. As a matter of fact, I did not talk to the man from SLED until after I was in the car, when I called for the News Reporter. The man driving the car said I wanted a News Reporter and he said: "No, he wants to go to jail." That's the first word he said to me.

Q. That's what you went there for, was the intention of—

A. Not to be arrested, to be served.

Q. And you intended to be served even though it might lead to your arrest?

A. No, we wanted to be served, if they were going to serve us. We had nothing to say about being arrested.

Q. Wasn't it your intention to make a case so that you could be arrested?

A. I think I told you I went there to be served and not to be arrested. I think I've told you that.

[fol. 37] Q. Now, after Mr. Terry told all of you to leave,

and the rest of them started to get up, didn't you motion them to get down?

A. Mr. Terry did not tell all of us to leave.

Q. Did you motion them to sit down again after they started to get up?

A. When I started to leave, since nobody went to them, I said just like that. (Indicating with the hand.)

Q. Mr. Terry is correct in that, and also the officer from SLED, that you were motioning them to sit down?

A. That's right, I did that.

Q. Of course this group going there, was the result of a prearranged plan on the part of all of you to go there and sit down and be served. Is that correct?

A. Well, in order to go there it had to be prearranged before we left our place of departure.

Q. In other words it was a prearranged plan of the group?

A. That particular day I went, I invited three men to go along with me to the Taylor Street Pharmacy. To leave the building to go there, it had to be prearranged.

Q. Are you a student?

A. I am.

Q. Where?

A. At Benedict.

Redirect examination.

By Mr. Jenkins:

Q. Assuming, without saying, that you did go to Taylor Street Pharmacy according to some prearranged plan, did you see anything wrong in that?

A. No, I didn't.

[fol. 38] Q. Did you go to Taylor Street Pharmacy as a member of the general public, invited in to do business?

A. I certainly did.

Mr. RICHARD M. COUNTS, being duly sworn, testifies as follows:

Direct examination.

By Mr. Jenkins:

Q. You are Richard M. Counts of Columbia?

A. That's correct.

Q. You are a student at Benedict?

A. That's correct.

Q. What's your classification?

A. Junior.

Q. You are a native Columbian I believe?

A. I am a native Columbian.

Q. Do you remember March 15th, 1960, going into Taylor Street Pharmacy on Taylor Street in Columbia, South Carolina?

A. I do.

Q. State to the Court your reason for going there?

A. Well, I invited a Fraternity Brother of mine, Charles Barr, to come and have lunch with me, and the two of us walked in last, and as we walked in, or before we got to the door, we saw the news man and the police on the outside—

Q. May I interrupt you. What was your reason for going to Taylor Street Pharmacy?

A. To be served food.

Q. You invited I believe, a friend of yours, to have lunch with you?

A. Charles Barr. He and I entered together.

[fol. 39] Q. Now briefly describe to the Court the events that took place in Taylor Street Pharmacy with reference to yourself on that day, March 15th?

A. Well, as I said, when we arrived there we saw the newsmen and the policemen on the outside, so we just ignored them completely because we didn't know why they were there, so we walked on in and as I entered last, the photographer came behind me so I stopped and went over to the cigarette counter and bought a pack of cigarettes and from there I went to the back and as I entered the en-

trance to the lunch counter I imagine it was the luncheonette manager, but it wasn't this gentleman here, Mr. Terry, he extended his arm to me like this (indicating) as if to say he was showing me a seat because as I got there it was very crowded and I didn't see a vacant booth or stool.

Q. When you went into the store you proceeded to the lunch department?

A. After I purchased a pack of cigarettes.

Q. You purchased the cigarettes first?

A. That's right.

Q. Where was Barr at this time?

A. I don't know. I think he had walked ahead of me.

Q. That was your companion who had gone with you to get lunch?

A. That's right.

Q. Now did you see these other defendants at that time?

A. Well, when I got to the entrance of the luncheonette counter, they were already seated.

Q. You saw these four?

A. Yes, sir.

[fol. 40] Q. They were seated at the lunch counter?

A. Already seated.

Q. Were there any vacant seats available when you first walked in?

A. There was one but I didn't see it, and so I stopped and looked as if I was looking for a stool, and then the gentleman extended his arm to me and said: "Have a seat here" and I sat there.

Q. You say a gentleman. Was it one of the employees of the store?

A. I would assume so.

Q. Upon what do you base your assumption?

A. Well, right after that he made the statement, after I had been seated, he said: "You may as well leave because we ain't going to serve you", so I thought he had some authority after having gone through all that.

Q. Now, I believe that you testified that when you walked in and looked around for a seat, this employee made a wide sweep of his arm?

A. That's correct.

Q. Was that sweep made in the direction of the vacant stool?

A. It was, and that's where I sat.

Q. You sat on that stool?

A. That's correct.

Q. How long after you were sitting there at the counter, —after you sat at the counter, you testified that this same store employee made some remark to you?

A. That's true.

Q. What was the remark?

A. He said: "You may as well leave, we ain't going to serve you."

[fol. 41] Q. Did you leave then?

A. No, I didn't because that left me a choice to stay or to leave, so I preferred to stay.

Q. Did you order any food while there?

A. Well, the waitress didn't come to take my order.

Q. Had the waitress come would you have ordered food?

A. Yes, sir.

Q. Did any police officer advise you to leave the stool where you were seated?

A. No, they did not.

Q. Why did you leave?

A. Well, the same gentleman whom I spoke of earlier, he came and he practically whispered in my ear the same thing he said before.

Q. What was that?

A. "You may as well leave, we ain't going to serve you", so after having been told twice I looked around at David Carter and he nodded to me as if to say we will leave, so as I stood up I walked to the exit, and then I think it was the Deputy Sheriff whispered in my ear "You're under arrest."

Q. He did tell you you were under arrest?

A. Yes.

Q. Did he tell you for what reason?

A. No.

Q. I don't know whether you testified to this or not but on previous occasions have you been in the Taylor Street Pharmacy?

A. I have.

Q. Have you made purchases there?

A. I have.

Q. Have you made any purchases in the food department of the Taylor Street Pharmacy?

[fol. 42] A. Once that I remember very distinctly when it was. It was during my Probation week, around the first week of May, that's the week I went over to the Fraternity, and I had to go up there one night on an errand and we purchased a sandwich and a soda.

Q. Did you eat that food there at the counter?

A. No, it was to go, because our time was limited.

Q. You took the food with you?

A. Yes.

Q. Did you believe that you had a right to sit at the counter and be served food at the Taylor Street Pharmacy?

A. I did then and I still do.

Q. Did you observe any conversation between any of the officials of the store or employees of the store and any police officer, while you were there on March 15th?

A. Only between the Deputy Sheriff and the luncheonette manager.

Q. Was the conversation you observed between them, before your arrest or after?

A. Well, it was before. It was after he had made the first general statement that "We ain't going to serve you."

Q. And after this conversation, the same officer came and told you you were under arrest?

A. Well, not directly. After the luncheonette manager talked to him, the luncheonette manager came to me again and whispered in my ear: "You may as well leave, we ain't going to serve you." Then I looked at Mr. Carter and he nodded to me and then we got up and then the Deputy Sheriff whispered in my ear: "You're under arrest."

[fol. 43] Cross examination.

By Mr. Sholenberger:

Q. You are Richard M. Counts?

A. That's right.

Q. You say that you never had any conversation with,

or nobody said anything to you except the luncheonette manager?

A. I imagine that's who it was.

Q. Do you recall seeing Mr. Terry?

A. Not at all.

Q. You don't recall seeing him?

A. No, I don't.

Q. In other words, do you deny that he told you to leave the luncheonette?

A. He didn't address me in any way.

Q. Do you remember seeing Mr. Stokes?

A. I do, because he rode in the same car I was in.

Q. You remember him, Mr. Stokes, telling you to leave the luncheonette?

A. Mr. Stokes did not tell me to leave.

Q. He didn't say a word?

A. No, sir, he didn't.

Q. The sum and substance of your testimony is that nobody told you to leave this establishment?

A. With the exception of the gentleman who I mentioned earlier.

Q. The luncheonette manager?

A. I imagine that's who it was.

Q. You say he told you to leave?

A. That's right.

Q. And you didn't leave did you?

A. Because he didn't address me in any direct manner to leave.

[fol. 44] Q. That's the point about having it phrased in so direct a manner.

A. The importance is I assume he had authority there. Had he told me to leave directly, I would have left, but he made it as if I had a choice to stay or leave. He made it clearly understood I wasn't going to be served, therefore I left the second time after he told me.

Q. Wasn't it agreed that this was a planned group to make a test case?

A. No, it was not.

Q. If that was not the case, then why is it that you never had gone to the luncheonette before during your stay in

Columbia, and seated yourself at the luncheonette counter?

A. Well, because as I say—

Q. Why this particular occasion, if there wasn't something behind it?

A. There wasn't any particular occasion.

Q. Why had you not gone there before?

A. That would be the same thing as why I had not gone to another store.

Q. You've been in this store before?

A. I have, on several occasions.

Q. Why didn't you sit down at the lunch counter then?

A. I was rushing on to do something else after I made my purchase.

Q. You say you went there with this group of four boys.

A. Charles Barr and I were walking together, and the other three walked in previously. In fact, if the officers recall, we saw them coming this direction, I can't recall the name of the street, but coming from towards Assembly [fol. 45] Street, and we were coming from the campus direction. We came from opposite directions.

Q. You met there at the same time?

A. They had entered before we had.

Q. How long?

A. I imagine a minute or two.

Q. All right, in addition to your purpose of going there to be served, and that was your purpose, wasn't it?

A. To be served food, yes, sir.

Q. Didn't you also go there for the purpose of being arrested?

A. No, I did not.

Q. You didn't have any idea that you would be arrested?

A. I did not.

Q. You had no idea you would be arrested?

A. I didn't see any reason to be.

Q. I think you testified to your counsel that you looked to David Carter in regard to this thing before you left. Wasn't he the leader of the group?

A. Well, I wouldn't call him the leader of the group. My purpose for looking at him was because he had been told the same thing I had been told.

Q. But you looked to him for leadership?

A. Not really. I just wanted to see what he was going to do.

Q. And why didn't you turn to this boy Barr that you came in with?

A. Well, because Carter was the closest to me.

Q. In other words, you didn't actually sit with the boy you came there with?

[fol. 46] A. Because he walked in ahead of me and there weren't any seats there for me to sit next to him.

Q. But you did go there for the purpose of creating a situation that would likely lead to your arrest?

A. No, I did not.

Q. Do you deny that?

A. I deny it.

Redirect examination.

By Mr. Jenkins:

Q. State whether you went into Taylor Street Pharmacy as a member of the general public invited to trade there?

A. I did.

Q. Now as far as the lunch room area is concerned, did you see any posted notice that you would not be served in that section?

A. I didn't notice any.

Q. How long did you stay in the lunch room section that day?

A. I think it was about five minutes.

Q. There were other persons in the lunch room area, than you and these four defendants?

A. That's right.

Q. Were any of them Negroes, other than you five?

A. No.

Q. Did you see anyone evicted on that day, other than you and these four other defendants?

A. No, I did not.

MOTIONS OF DEFENDANTS TO DISMISS THE CHARGES AGAINST THEM, ETC. AND DENIAL THEREOF

Mr. Jenkins: We have no further testimony, your Honor, but at this time we would like to make certain motions.

The defendants move the Court to dismiss the charges against them and each of them, on the ground that the Court lacks jurisdiction to try these defendants as charged. [fol. 47] The evidence shows that the defendants were arrested and charged by police officers, agents of the State, not for the commission of any crime as charged, or any other for that matter, but in furtherance and in aid of the wishes of private individuals to discriminate against the defendants, based solely on their race and color.

This Court, also an agent of the state, cannot use its authority to aid in the enforcement of a private discrimination based solely on race and color. For this Court to subject the defendants to fine and conviction under the evidence and testimony in this case, would be a violation of due process of law and would deny to the defendants the equal protection of the laws as guaranteed the defendants by the 14th Amendment to the United States Constitution.

The Court: I'll have to overrule that motion on the ground that under the laws of South Carolina and of the United States, I can't grant it.

Mr. Jenkins: The defendants move to dismiss all charges against them and each of them, on the grounds that the evidence shows that the statutes (*i.e.*, S. C. Code, Sec. 16-386, as amended, Trespass, and S. C. Code Sec. 15-909, Breach of Peace) though nondiscriminatory on their faces, are discriminatory when applied to these defendants, thus denying to them due process of law and equal protection of the laws, in violation of the 14th Amendment of the United States Constitution and Article 1, Sec. 5 of the Constitution of South Carolina. The grounds for said motion are that the evidence proves,

(1) That said statutes are being used by the police power of the State to aid private individuals in businesses catering to the general public, to discriminate against these defendants solely on the basis of race and color, in violation

[fol. 48] of the 14th Amendment of the United States Constitution;

(2) That said statutes are being used as a basis of unconstitutional State action in that the State police power is provided to eject the defendants from a public place where they have been invited and where they have a legal right to go, and to arrest them and deprive them of their liberty solely on the basis of race and color;

(3) That said statutes are being used as a basis of unconstitutional State action in depriving said defendants of the equal protection of the laws in that they are arbitrarily and unreasonably singled out by being ejected and arrested solely on the basis of their race and color, while others are allowed to remain where the defendants had the legal right to be.

The Court: Motion denied.

Mr. Jenkins: The defendants move for the dismissal of all charges against themselves and each of them, on the ground that the operator of the private business catering to the general public, invited them in and afterwards discriminated against them in the sale and purchase of wares and services solely on the basis of race and color, and that the State, through the use of its police as its agents, cannot become a party to and assist in this unequal treatment. If the State should so assist the private business operator by ejecting and arresting the defendants, the State denies to said defendants the equal protection of the laws in violation of the 14th Amendment of the United States Constitution.

The Court: I'll deny that motion, too.

Mr. Jenkins: Defendants move to dismiss the charges of trespass and breach of the peace, in violation of State Statutes, Section 16-386 and 15-909, on the ground that the [fol. 49] evidence proves that the defendants, as business invitees of a business catering to the general public were merely attempting in a peaceful and lawful manner to exercise the freedom of being served by said business on a nondiscriminatory basis, without regard to race and color, and in so doing were not guilty of any crime.

Further, the defendants move to dismiss the charges of trespass and breach of the peace on the ground that to deprive them of their liberty to enter such a business establishment in a peaceful and lawful manner as the record describes, and be served as others, and that to be ejected and arrested by agents of the State, solely on the basis of race and color, and to be singled out as the only persons ejected and arrested while others remain, is a denial of due process of law and the equal protection of the law as guaranteed by the 14th Amendment of the United States Constitution.

The Court: Motion denied.

Mr. Jenkins: The defendants move for a dismissal of the charge of trespass because of the insufficiency of the evidence to substantiate the charge. The basis of the motion is that even if a private individual in a public business may discriminate against these defendants on the basis of race and color alone (a point which we do not concede), nevertheless, for the State to back up this discrimination by State action in ejecting, arresting and subjecting to trial these defendants, is a denial of due process of law and a denial of the equal protection of the laws as guaranteed by the 14th Amendment of the Constitution of the United States.

The Court: Motion denied.

[fol. 50] Mr. Jenkins: The defendants move for a dismissal of all charges against them for the reason that the evidence fails to show the commission of any of the charges alleged. Instead, the evidence, interpreted most favorably to the State, shows that the said defendants, without violating any rights of the public, were attempting to exercise their common law right of free access to the common market. To be denied that right by the State ejecting them from the business places described in the record, and subjecting them to arrest solely on the basis of race and color is a denial of the equal protection of the laws and due process of law as guaranteed by the 14th Amendment of the United States Constitution and Article 1, Section 5 of the South Carolina Constitution.

The Court: Motion denied.

JUDGMENT

The Court: Now I would like to say this: The law of this State and of the United States is well established, that any private concern or any private individual operating any business, has the right fundamentally and under the Constitution of the United States and of South Carolina, to do business with anybody whomsoever he pleases. That's the fundamental law of this State and of the United States. The witness Mr. Terry, testified that he had a notice posted on the door that he had a right to refuse to serve anybody, whether they are White, Colored or anybody else, if he saw fit to do it, which he had a right to do. Now it's just like a doctor or a lawyer, if a man comes to a doctor's office and wants to be treated, the doctor hasn't got to treat him if he don't want to do it, and neither has a lawyer got to accept a client if he don't want to accept him. That's a fundamental inherent right which an individual has. Now we have a lot of talk about Civil Rights. The [fol. 51] Senate of the United States is today debating the Civil Rights Bill in Washington, but we overlook oftentimes certain property rights and certain inherent rights that an individual has. An individual has rights to do business with anybody he wants to. It's not merely a Colored person or a White person or any other race, but it's a right that if anybody don't want to do business with a person, he don't have to transact business with him. I might mention in passing, that the relationship between the Colored people and the White people of this section has been most harmonious and very cordial for a great many years. It's been very harmonious and very cordial, until some outside interest comes in and tries to create trouble and start trouble, which is a very bad thing, and oftentimes these outside interests are insidious. The Colored race has made great progress down in this part of the country and we can continue to get along well if these outside interests will not come in and try to interfere with our relationship. I'm sick and tired of the Northern politicians playing politics with human rights, and that's what it amount to, the Northern politicians are playing politics with human individual rights which they are making a serious mistake

to do. We can get along well. We can transact our business well as we have done in the past, if we will just keep these outside insidious and selfish interests out. Now I'm not going to quote much law because it's not necessary, but in Second Ruling Case Law, page 559, I'm quoting: "It is a well settled principle that the occupant of any house, store or other building, has a legal right to control it and to admit whom he pleases to enter and to remain there and that he also has the right to expel from the room or building, anyone who abuses the privilege, which has been thus given to him. Therefore, while the entry by one person [fol. 52] on the premises of another, may be lawful by reason of express or implied invitation to enter, his failure to depart on the request of the owner, will make him a trespasser and justify the owner in using reasonable force to eject him." That's the fundamental law of the land and we are going to have to abide by it.

The judgment of the Court is that the defendants are guilty as charged, and they will be fined the sum of $100.00 on each charge, of which amount the sum of $24.50 will be suspended on each charge.

MOTIONS OF DEFENDANTS FOR ARREST OF JUDGMENT, OR IN THE ALTERNATIVE, FOR A NEW TRIAL, ETC. AND DENIAL THEREOF

Mr. Jenkins: Your Honor, at this time, on behalf of the defendants I should like to make certain motions. At this time the defendants move the Court for the Arrest of Judgment, or in the alternative, for a New Trial, on the ground that the Court lacks jurisdiction to try these defendants as charged. The evidence shows that the defendants were arrested and charged by police officers, agents of the State, not for the commission of any crime as charged, or any other for that matter, but in furtherance and in aid of the wishes of private individuals to discriminate against the defendants, based solely on their race and color. This Court, also an agent of the State, cannot use its authority to aid in the enforcement of a private discrimination, based solely on race and color. For this Court to subject the defendants to fine and conviction under the evidence and

testimony in this case, would be a violation of due process of law and would deny to the defendants the equal protection of the laws as guaranteed the defendants by the 14th Amendment to the United States Constitution.

The Court: I'll refuse the motion.

Mr. Jenkins: The defendants move for an Arrest of Judgment or in the alternative, for a New Trial, on the [fol. 53] grounds that the evidence shows that the Statutes (*i.e.*, S. C. Code, Sec. 16-386, as amended, trespass, and S. C. Code, Sec. 15-909, breach of the peace) though non-discriminatory on their faces, are discriminatory when applied to these defendants, thus defying to them due process of law and equal protection of the laws, in violation of the 14th Amendment of the United States Constitution and Article 1, Section 5 of the Constitution of South Carolina.

The grounds for said motion are that the evidence proves:

(1) That said statutes are being used by the police power of the State to aid private individuals and businesses catering to the general public to discriminate against these defendants solely on the basis of race and color, in violation of the 14th Amendment of the United States Constitution;

(2) That said statutes are being used as a basis of unconstitutional State action in that the State police power is provided to eject the defendants from a public place where they have been invited and where they have a legal right to go and to arrest them and deprive them of their liberty solely on the basis of race and color;

(3) That said statutes are being used as a basis of unconstitutional State action in depriving said defendants of the equal protection of the laws, in that they are arbitrarily and unreasonably singled out by being ejected and arrested solely on the basis of their race and color, while others are allowed to remain where the defendants had the legal right to be.

The Court: Motion denied.

Mr. Jenkins: The defendants move for an Arrest of Judgment or in the alternative, for a New Trial, on the ground that the operator of the private business catering

[fol. 54] to the general public, invited them in and afterwards discriminated against them in the sale and purchase of wares and services solely on the basis of race and color, and that the State, through the use of its police as its agents, cannot become a party to and assist in this unequal treatment. If the State should so assist the private business operator by ejecting and arresting the defendants, the State denies to said defendants the equal protection of the laws in violation of the 14th Amendment of the United States Constitution.

The Court: I'll deny that motion.

Mr. Jenkins: The defendants move for an Arrest of Judgment, or in the alternative, for a New Trial, on the ground that the evidence proves that the defendants as business invitees of a business catering to the general public, were merely attempting in a peaceful and lawful manner, to exercise the freedom of being served by said business on a nondiscriminatory basis, without regard to race or color, and in so doing were not guilty of any crime.

Further, the defendants move for an Arrest of Judgment, or in the alternative, for a New Trial, on the ground that the charge of breach of peace and trespass, the charges with which they are being charged here today will deprive them of their liberty to enter such a business establishment in a peaceful and lawful manner as the record describes, and to be served as others, and that to be ejected and arrested by agents of the State, solely on the basis of race and color, and to be singled out as the only persons ejected and arrested while others remain, is a denial of due process of law and the equal protection of the laws as guaranteed by the 14th Amendment to the United States Constitution.

[fol. 55] The Court: Motion denied.

Mr. Jenkins: The defendants move for an Arrest of Judgment or in the alternative, for a New Trial, on the ground that the evidence is insufficient to substantiate the charge of trespass. The basis of this motion is that even if the private individual in a public business, may discriminate against these defendants on the basis of race and color alone, a part which we do not concede, nevertheless, for the State to back up this discrimination by State

action in ejecting, arresting and subjecting to trial these defendants, is a denial of due process of law and a denial of the equal protection of the laws as guaranteed by the 14th Amendment to the Constitution of the United States.

The Court: Motion denied, likewise.

Mr. Jenkins: The defendants move for an Arrest of Judgment or in the alternative, for a New Trial, for the reason that the evidence fails to show the commission of any of the charges alleged against these defendants. Instead, the evidence, interpreted most favorably to the State, shows that the said defendants, without violating any rights of the public, were attempting to exercise their common law right of free access to the common market. To be denied that right by the State ejecting them from the business places described in the record and subjecting them to arrest solely on the basis of race and color, is a denial of the equal protection of the laws and due process of law as guaranteed by the 14th Amendment of the United States Constitution and Article 1, Section 5 of the South Carolina Constitution.

The Court: Motion denied.

Mr. Jenkins: At this time if your Honor please, on behalf of these defendants, I serve notice of intention to appeal and request that the Court set bond.

[fol. 56] The Court: Mr. Sholenberger, I think we might let the same cash bond stand as an Appeal Bond.

Mr. Jenkins: We just want the record to show that we are not paying any fine—

The Court: Let the record show that I am letting that stand as an Appeal Bond. Is there anything else?

Mr. Jenkins: If your Honor please, I discussed this matter yesterday, that in the previous hearing the Motions were passed to the Court Stenographer. I am certain it was the intention that they be entered in the record and I notice in taking the testimony that Mr. Cordell did not include them into the record. At this time I am requesting if your Honor please, that they be included.

The Court: I'll attach them to the testimony and make them a part of the record. They will be attached to the record and made a part of the record.

I hereby certify that the foregoing is a true and correct transcript of the stenographic notes of testimony taken by me at the trial of the above cases.

Jas. C. Cordell, Reporter.

IN THE RICHLAND COUNTY COURT, CRIMINAL DIVISION

OPINION—April 28, 1961

These Appeals from the Recorder's Court of The City of Columbia were orally argued together before me and taken under advisement. The facts are largely undisputed. All of the Defendants are Negroes. Eckerd's Drug Store and Taylor Street Pharmacy are separate stores in The City of Columbia. Besides filling prescriptions, each sell drugs and sundries and has a section where lunch, light snacks and soft drinks are served. Trade is with the general public in all the departments except the lunch depart-
[fol. 57] ment where only white people are served.

On one occasion, Bouie and Neal went into Eckerd's and on another day the other Defendants went into the Taylor Street Pharmacy, sat down in the lunch department and waited to be served. All said they intended to be arrested. In each case, the manager of the store came up to them with a peace officer and asked them to leave. They refused to do so and were then placed under arrest and charged with trespass and breach of the peace. Bouie, in addition, was charged with resisting arrest. It is undenied that he resisted.

Bouie and Neal were tried on March 25, 1960, and the other Defendants on March 30, 1960, before The Honorable John I. Rice, City Recorder of Columbia, without a jury; trial by jury having been waived by all the Defendants.

All the Defendants were convicted and sentenced and these appeals followed. Motions raising the constitutional questions were timely made.

There are 16 grounds of Appeal in the Bouie and Neal proceeding and 13 grounds of appeal in the proceeding

involving the other Defendants, raising the following questions: (1) Did the State deny Defendants, who are Negroes, due process of law and equal protection of the laws within the Federal and State Constitutions either by using its peace officers to arrest them or by charging them with violating Sects. 16-386 (Criminal Trespass) and 15-909 (Breach of Peace) of the Code of Laws of South Carolina, 1952, as amended, when they refused to leave a lunch counter when asked by the manager thereof to do so? (Bouie and Neal Nos. 1, 2, 3, 4, 5, 6, 10, 11, 12, 13, 14, and 15; other Defendants, Nos. 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12 and 13.). (2) Was there any substantial evidence pointing to the [fol. 58] guilt of the Defendants? (Bouie and Neal, No. 8; other Defendants, No. 7.)

Since Defendants did not argue Bouie and Neal's Exceptions 7, 9 and 16, I have considered them abandoned.

The State has not denied Defendants equal protection of the laws or due process of law within the Federal or State Constitutional provisions.

A lunch room is like a restaurant and not like an inn.

The difference between a restaurant and an inn is explained in *Alpough* v. *Wolverton*, 36 S. E. (2d) 907 (Court of Appeals of Virginia) as follows:

> "The proprietor of a restaurant is not subject to the same duties and responsibilities as those of an innkeeper, nor is he entitled to the privileges of the latter. 28 A. Jr., Innkeepers, No. 120, p. 623; 43 C. J. S., Innkeepers, No. 20, subsection b, p. 1169. His responsibilities and rights are more like those of a shopkeeper. *Davidson* v. *Chinese Republic Restaurant Co.*, 201 Mich. 389, 167 N. W. 967, 969, L. R. A. 1919 E, 704. He is under no common-law duty to serve anyone who applies to him. In the absence of statute, he may accept some customers and eject others on purely personal grounds. *Nance* v. *Mayflower Tavern, Inc.*, 106 Utah 517, 150 P. (2d) 773, 776; *Noble* v. *Higgins*, 95 Misc. 328, 158 N. Y. S. 867, 868."

And the proprietor can choose his customers on the basis of color without violating constitutional provisions. *State* v. *Clyburn*, 101 S. E. (2d) 295, 247 N. C. 455; *Williams* v. *Howard Johnson's Restaurant*, 268 F. (2d) 845; *Slack* v. *Atlantic Whitetower, etc.*, 181 F. Sup. 124 (Dist. Court Md.), 284 F. (2d) 746.

[fol. 59] In the *Williams* case, *supra*, Judge Soper, speaking for the Court of Appeals for The Fourth Circuit, said: "As an instrument of local commerce, the restaurant is not subject to the Constitution and statutory provisions above (Commerce Clause and Civil Rights Acts of 1875), and is at liberty to deal with such persons as it may select."

And in *Boynton* v. *Virginia*, . . . U. S. . . . , 81 S. Ct. 182, 5 L. Ed. (2d) 206, The Supreme Court of The United States took care to state:

> "Because of some of the arguments made here it is necessary to say a word about what we are not deciding. We are not holding that every time a bus stops at a wholly independent roadside restaurant the Interstate Commerce Act requires that restaurant service be supplied in harmony with the provisions of that Act. We decide only this case, on its facts, where circumstances show that the terminal and restaurant operate as an integral part of the bus carrier's transportation service for interstate passengers."

I have reviewed all of the cases cited by both the City and the Defendants, and in addition have reviewed subsequent cases of the Court of Appeals and The United States Supreme Court, including the case of *Burton* v. *Wilmington Parking Authority*, handed down on April 17, 1961, and find none applicable or controlling except the *Williams* and *Slack* cases, *supra*.

The Defendants, under South Carolina law, had no right to remain in the stores after the manager asked them to leave. *Shramek* v. *Walker*, 149 S. E. 331, 152 S. C. 88. As the Court quoted the rule, "while the entry by one person on the premises of another may be lawful, by reason of express or implied invitation to enter, his failure to [fol. 60] depart, on the request of the owner, will make him

a trespasser, and justify the owner in using reasonable force to eject him."

If the manager could have ejected Defendants himself, he could call upon officers of the law to eject them for him.

Since the Defendants refused to leave, they were criminal trespassers under Sect. 16-386 and breached the peace under Sect. 15-909 of The Code of Laws of South Carolina, 1952, and their conviction was proper.

Shelly v. *Kraemer*, 334 U. S. 1, 92 L. Ed. 845, 68 S. Ct. 836, 3 A. L. R. (2d) 441, and *Barrows* v. *Jackson*, 346 U. S. 249, 97 L. Ed. 1586, 73 Supreme Court 1031 cited by the Defendants are not in point. In both of these cases, there had been a sale of real estate to a non-caucasian in violation of restrictive covenants. In the *Shelly* case, the Court held that the equity of court of the State could not be used against the non-caucasian to enforce the covenant. In the *Barrows* case, the court held that the covenant could not be enforced by an action at law for damages against the co-covenanter, who broke the covenant.

In both of these cases, there were willing sellers and willing purchasers. The purchasers paid their money and entered into possession. Having entered, they had a right to remain.

In the cases before the Court, there were no two willing parties to a contract. True, the Defendants wanted to buy, but the storekeeper did not want to sell and the Defendants had no right to remain after being asked to leave. A white person would not have the right to remain after being asked to leave either. In either case, a person would be a trespasser. The Constitutions provide for equal rights, not paramount rights.

[fol. 61] I have only to pick up my current telephone directory and look in the yellow pages to find at least four establishments listed under "Restaurants" that advertise that they are for colored or for-colored only.

To say that a white proprietor may not call upon a policeman to remove or arrest a Negro trespasser or a Negro proprietor cannot call a policeman to remove or arrest a white trespasser would lead to confusion, lawlessness and possible anarchy. Certainly, the Constitutions intended no such result.

The fundamental fallacy in the argument of Defendants is the classification of the stores and lunch counters as public places and the operations thereof as public carriers.

A person, whatever his color, enters a public place or carrier as a matter of right. The same person, whatever his color, enters a store or restaurant or lunch counter by invitation.

That person's right to remain in a public place depends upon the law of the land, and in a public carrier upon such law and such reasonable rules as the carrier may make, and, under the Constitution, neither the law nor rules may discriminate upon the basis of color.

On the other hand, the same person has no right to enter a store, a restaurant, or lunch counter unless and until invited, and may remain only so long as the invitation is extended. Whether he enters or remains depends solely upon the invitation of the storekeeper, who has a full choice in the matter. The operator can trade with whom he wills, or he can, at his own whim and pleasure, close up shop.

There is no question but that the Defendants are guilty. They were asked to leave, and they refused. They, thereupon, were trespassers and such constituted a breach of the [fol. 62] peace. In addition, Bouie admittedly resisted a lawful arrest.

The trespass statute (Section 16-386, as amended, Code of Laws of South Carolina, 1952) is not restricted to "pasture or open hunting lands" as Defendants argue. The statute specifically says "any other lands". In Webster's New International Dictionary, the definition of "land" in "Law" is as follows:

> "(a) any ground, soil, or earth whatsoever, regarded as the subject of ownership, as meadows, pastures, woods, etc., and everything annexed to it, whether by nature, as trees, water, etc., or by man, as buildings, fences, etc., extending indefinitely vertically upwards and downwards. (b) An interest or estate in land; loosely any tenement or hereditament."

The statute thus applies everywhere and without discrimination as to color. There is no question but that it was designed to keep peace and order in the community.

Since Defendants had notice that neither store would serve Negroes at their lunch counters, they were trespassers *ab initio*. Aside from this however, the law is that even though a person enters property of another by invitation, he becomes a trespasser after he has been asked to leave. *Shramek* v. *Walker, supra.*

For the reasons herein stated, I am of the opinion that the judgments and sentences of the Recorder should be sustained and the Appeals dismissed, and it is so *ordered.*

John W. Crews, Judge, Richland County Court.

Columbia, S. C., April 28, 1961.

[fol. 63]

IN THE RICHLAND COUNTY COURT, CRIMINAL DIVISION

NOTICE OF INTENTION TO APPEAL—May 2, 1961

To: Messrs. John W. Sholenberger and Edward A. Harter, Jr., Attorneys for the City of Columbia:

You will please take notice that the defendants above named intend to and do hereby appeal to the Supreme Court of South Carolina from the Order of the Richland County Court, Criminal Division, in the above entitled matter, dated April 28, 1961, upon a case and exceptions hereafter to be served upon you.

Jenkins & Perry, By: Lincoln C. Jenkins, Jr., Attorneys for Defendants.

Acceptance of service (omitted in printing).

IN THE RICHLAND COUNTY COURT, CRIMINAL DIVISION

EXCEPTIONS

1. The Court erred in refusing to hold that the City failed to prove a *prima facie* case.

2. The Court erred in refusing to hold that the City failed to establish the *corpus delicti.*

3. The Court erred in refsuing to hold that the evidence shows conclusively that the arresting officers acted in the furtherance of a custom, practice and policy of discrimination based solely on race or color, and that the arrests and convictions of appellants under such circumstances are a denial of due process of law and the equal protection of the laws, secured to them by the Fourteenth Amendment to the United States Constitution.

[fol. 64] 4. The Court erred in refusing to hold that the evidence establishes merely that at the time of their arrests appellants were peaceably upon the premises of Taylor Street Pharmacy as customers, visitors, business guests or invitees of a business establishment performing economic functions invested with the public interest, and that the procurement of the arrest of appellants by management of said establishment under such circumstances in furtherance of a custom, practice in and policy of racial discrimination is a violation of rights secured appellants by the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.

IN THE RICHLAND COUNTY COURT, CRIMINAL DIVISION

STIPULATION

It is hereby stipulated and agreed by and between counsel for the appellants and respondent that the foregoing, when printed, shall constitute the Transcript of Record herein and that printed copies thereof may be filed with the Clerk of the Supreme Court and shall constitute the Return herein.

Respectfully submitted,

John W. Sholenberger, Edward A. Harter, Jr., Columbia, South Carolina, Attorneys for Respondent.

Jenkins & Perry, Columbia, South Carolina, By: Lincoln C. Jenkins, Jr., Attorneys for Appellants.

[fol. 65]

IN THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

Case No. 4777

THE CITY OF COLUMBIA, Respondent,

v.

CHARLES F. BARR, RICHARD M. COUNTS, DAVID CARTER, MILTON D. GREENE and JOHNNY CLARK, Appellants.

Appeal From Richland County, John W. Crews, County Judge.

Affirmed

Jenkins & Perry, of Columbia, for appellants.

John W. Sholenberger and Edward A. Harter, Jr., both of Columbia, for respondent.

OPINION No. 17857—Filed December 14, 1961

OXNER, A.J.: The five appellants, all Negroes, were convicted in the Municipal Court of the City of Columbia of trespass in violation of Section 16-386 of the 1952 Code, as amended, and of breach of the peace in violation of Section 15-909. Each defendant was sentenced to pay a fine of $100.00 or serve a period of thirty days in jail on each charge but $24.50 of the fine was suspended. From an order of the Richland County Court affirming their conviction, they have appealed.

The exceptions can better be understood after a review of the testimony. The charges grew out of a "sit-down" demonstration staged by appellants at the lunch counter of the Taylor Street Pharmacy in the City of Columbia, a privately owned business. In addition to selling articles usually sold in drugstores, this establishment maintains a lunch counter in the rear, separated from the front of the

store by a partition. The customers sit on stools. The policy of this store is not to serve Negroes at the lunch counter although they are permitted to purchase food and eat it elsewhere. In a sign posted the privilege of refusing service to any customer was reserved.

Shortly after noon on March 15, 1960, appellants, then college students, according to a prearranged plan, entered this drugstore, proceeded to the rear and sat down at the lunch counter. The management had heard of the proposed demonstration and had notified the officers. To prevent violence, three were present when appellants entered. As soon as they took their seats several of the customers at the counter, including a White woman next to whom one of appellants sat, stood up. The manager of the store then came back to the lunch counter. He testified that the situation was quite tense, that you "could have heard a pin drop in there", and that "everyone was on pins and needles, more or less, for fear that it could possibly lead to violence." He immediately told appellants that they would not be served and requested them to leave. They said nothing and continued to sit. At the suggestion of one of the officers, the manager then spoke to each of them and again requested that they leave. One of them stood up and inquired if he could ask a question. As this was done, the other four appellants arose. The manager replied that he did not care to enter into a discussion and a third time told appellants to leave. Instead of doing so, they resumed their seats. After waiting several minutes, the officers arrested all of them and took them to jail.

The foregoing summary is taken from the testimony offered by the State. Only two of the appellants testified. They denied that the manager of the store requested them to leave. They testified that an employee at the lunch counter stated to them, "You might as well leave because I ain't going to serve you", which they did not construe as [fol. 66] a specific request. They said after it became apparent that they were not going to be served, they voluntarily left the lunch counter and as they proceeded to do so, were arrested. They denied that any of the White customers got up when they sat down, stating that these customers did

so only after the employee at the lunch counter said: "Get up, we will get them out of here."

The questions involved are stated in appellants' brief as follows:

> "I. Did the Court err in refusing to hold that under the circumstances of this case, the arrests and convictions of appellants were in furtherance of a custom of racial segregation, in violation of the Fourteenth Amendment to the United States Constitution? (Exceptions 3, 4).
>
> "A. Was the enforcement of segregation in this case by State Action within the meaning of the Fourteenth Amendment?
>
> "B. Were appellants unwarrantedly penalized for exercising their freedom of expression in violation of the Fourteenth Amendment?
>
> "II. Did the State fail to establish the corpus delicti or prove a prima facie case? (Exceptions 1, 2)."

The questions designated 1, A and B, must be decided adversely to appellants under City of Greenville v. Peterson, filed November 10, 1961, —— S. C. ——, —— S. E. (2d) ——, and City of Charleston v. Mitchell, filed December 13, 1961, —— S. C. ——, —— S. E. (2d) ——. Each of these cases involved a sit-down demonstration at a lunch counter in a privately owned place of business and the precise questions raised by Exceptions 3 and 4 in the instant case were raised in those cases and overruled. In the City of Charleston case we affirmed a conviction for violation of Section 16-386 as amended, which is the same section under which the appellants were convicted.

We think that Question II is based on exceptions too general to be considered. They are as follows:

> "1. The Court erred in refusing to hold that the City failed to prove a prima facie case.
>
> "2. The Court erred in refusing to hold that the City failed to establish the corpus delicti."

The foregoing exceptions do not comply with Rule 4, Section 6 of this Court. They do not point out in what respect the City failed to make out a prima facie case or to establish the corpus delicti. We do not know to which of the two offenses involved these exceptions are directed. We are not aided by appellants' brief. Only scant reference is there made to these two exceptions and apparently the position is taken that their determination is dependent upon the disposition of the other questions which we have held to be without merit.

It has been held that an exception to the effect that the judgment is contrary to the law and the evidence is too general to be considered. State v. Turner, 18 S. C. 103; State v. Cokley, 83 S. C. 197, 65 S. E. 174; State v. Davis, 121 S. C. 350, 113 S. E. 491. The same conclusion has been reached with reference to an exception "that plaintiff failed to make out a case against defendant." Concrete Mix, Inc. v. James, 231 S. C. 416, 98 S. E. (2d) 841. Other pertinent cases are reviewed in Howitt v. Reserve Life Insurance Co., 235 S. C. 201, 110 S. E. (2d) 852. It was pointed out in Brady v. Brady, 222 S. C. 242, 72 S. E. (2d) 193, that "every ground of appeal ought to be so distinctly stated that the Court may at once see the point which it is called upon to decide without having to 'grope in the dark' to ascertain the precise point at issue."

In oral argument counsel for appellants raised the question of merger of the two offenses and argued that there could not be a conviction on both charges. But this question is not raised by any of the exceptions, is not referred to in the brief of appellants and, therefore, is not properly before us.

Affirmed.

Taylor, C.J., Legge, Moss and Lewis, JJ., concur.

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 67]

IN THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

Case No. 4777

[Title omitted]

PETITION FOR REHEARING—Filed December 20, 1961

To the Honorable Chief Justice and Associate Justices of the Supreme Court of South Carolina:

Petitioners, Charles F. Barr, Richard M. Counts, David Carter, Milton D. Greene and Johnny Clark, respectfully request a rehearing in the above case. Petitioners submit that this Court in affirming that the judgment of the Court below may have overlooked or misapprehended certain facts and rules of law, urged by petitioners in their appeal.

1. The Court may have misapprehended that Section 16-386, Code of Laws of South Carolina for 1952, was invoked against petitioners in this case solely for the purpose of preserving and furthering the custom of excluding Negroes from lunch counters in Columbia, South Carolina or segregating them in same, in violation of petitioners' rights to due process of law and equal protection of the laws, protected by the Fourteenth Amendment to the United States Constitution.

[fol. 68] 2. The Court may have overlooked petitioners' assertion that they were unwarrantedly penalized for exercising their freedom of expression in violation of the Fourteenth Amendment. The Court further overlooked the applicability of *Marsh* v. *Alabama*, 326 U. S. 501, 90 L. Ed. 265, 66 S. Ct. 276, and *Munn* v. *Illinois*, 94 U. S. 113, 24 L. Ed. 77, to this argument.

3. The Court may have overlooked petitioners' assertion that in arresting and prosecuting petitioners, the State has either enforced or supported racial segregation in a place open to the general public, thereby infringing their rights under the Fourteenth Amendment to the United States Constitution. Petitioners, in their appeal, did not challenge the right of the store manager to select his customers, but

asserted that the State cannot implement and enforce segregation by direct action on the part of its police nor by statutory scheme.

4. The Court may have overlooked or misapprehended that petitioners' convictions of the offenses of trespass after notice under Section 16-386, Code of Laws of South Carolina for 1952 and breach of peace under Section 15-909, Code of Laws of South Carolina for 1952, rested upon no evidence of any substantial element of either of said offenses, in violation of petitioners' right to due process of law under the Fourteenth Amendment to the United States Constitution. *Thompson* v. *City of Louisville*, 362 U.S. 199, 80 S. Ct. 629 (1960).

Conclusion

Wherefore, petitioners request they be granted a rehearing in this case.

Jenkins and Perry, Columbia, South Carolina, By Matthew J. Perry, Attorneys for Petitioners.

Columbia, South Carolina, December 20, 1961.

[fol. 69]

Certificate

I, Harold R. Boulware, hereby certify that I am a practicing attorney of this Court and am in no way connected with the within case. I further certify that I am familiar with the record of this case and have read the opinion of this Court which was filed December 14, 1961, and in my opinion there is merit in the Petition for Rehearing.

Harold R. Boulware

Columbia, South Carolina, December 20, 1961.

[fol. 70] [File endorsement omitted]

ORDER DENYING PETITION FOR REHEARING
—Filed January 8, 1962

The within petition for a rehearing is denied.

C. A. Taylor, C.J., G. Dewey Oxner, A.J., Lionel K. Legge, A.J., Joseph R. Moss, A.J., J. Woodrow Lewis, A.J.

[fol. 71]
IN THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

Case No. 4777

[Title omitted]

PETITION FOR STAY OF REMITTITUR

To the Honorable G. Dewey Oxner, Associate Justice of the Supreme Court of South Carolina:

The Petition of Charles F. Barr, Richard M. Counts, David Carter, Milton D. Greene and Johnny Clark, respectfully shows:

1.

Petitioners have been convicted of the offense of trespass after notice under Section 16-386, Code of Laws of South Carolina for 1952 and breach of peace under Section 15-909, Code of Laws of South Carolina for 1952. Their convictions and sentences have been affirmed by the Supreme Court of South Carolina in an Opinion which was filed on December 14, 1961.

2.

Thereafter, petitioners requested rehearing of said cause in a Petition therefor dated December 20, 1961. Rehearing was denied this day.

[fol. 72] 3.

Petitioners are aggrieved with said decision and intend to petition the Supreme Court of the United States for a Writ of Certiorari in order that that Court can pass upon petitioners' contention that their arrests and convictions were in furtherance of a custom of racial segregation and rested upon no evidence of any substantial element of said offenses in violation of their rights to due process of law and equal protection of the law, protected by the Fourteenth Amendment to the United States Constitution.

4.

Under the Rules of the United States Supreme Court, petitioners have ninety (90) days after the rehearing of the final judgment of this Court within which to file their Petition for Writ of Certiorari. Petitioners are therefore desirous of obtaining a stay of the sentences imposed upon them and a Stay of the Remittitur herein for a period of ninety (90) days after the rendering of the final judgment of this Court in order that they may have time within which to file said Petition for Writ of Certiorari.

5.

Counsel for the City of Columbia have agreed to a proposed Order, Staying the Remittitur for the requested period.

Wherefore, petitioners pray that execution of their sentences be stayed and that Remittitur in this matter be stayed by order to this Honorable Court for a period of [fol. 73] ninety (90) days after the final judgment of said Court in order that petitioners may file in the United States Supreme Court a Petition for Writ of Certiorari.

Jenkins and Perry, Columbia, South Carolina, By: Matthew J. Perry, Attorneys for Appellants.

[File endorsement omitted]

[fol. 74]

IN THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

Case No. 4777

CITY OF COLUMBIA, Respondent,

against

CHARLES F. BARR, RICHARD M. COUNTS, DAVID CARTER, MILTON D. GREENE and JOHNNY CLARK, Appellants.

ORDER STAYING REMITTITUR—January 8, 1962

On the 14th day of December, 1961, we issued an Opinion in the above case, affirming the judgment of the Richland County Court which sustained the judgment of the Recorder's Court of the City of Columbia wherein appellants were convicted of violating Section 16-386, Code of Laws of South Carolina for 1952, namely, Trespass after Notice, and Section 15-909, Code of Laws of South Carolina for 1952, namely, Breach of Peace.

Thereafter, appellants petitioned this Court for a rehearing and, on January 8, 1962 we entered an Order, denying same.

Appellants have now indicated that they desire and intend to file in the Supreme Court of the United States a Petition for Writ of Certiorari, seeking review of our judgment in said cause. Under the rules and decisions of the United States Supreme Court, they have ninety (90) days after the final judgment of this Court within which to file [fol. 75] their Petition for Writ of Certiorari. The final judgment of this Court is the Order, denying rehearing. *Department of Banking, State of Nebraska* v. *Pink*, 63 S. Ct. 253, 217 U. S. 264, 87 L. Ed. 254. They desire a stay of the Remittitur and Sentences in this matter pending the filing of their Petition for Writ of Certiorari in the United States Supreme Court and thereafter until said matter has been disposed of by that Court. It appears that the request for stay of remittitur and sentences is proper. Now, on

motion of counsel for the appellants, by and with the consent of counsel for the respondent,

It Is Ordered that the Remittitur and execution of the Sentences herein be stayed for a period of ninety (90) days after the day of the final judgment of this Court in order that petitioners may file with the United States Supreme Court their Petition for Writ of Certiorari.

It Is Further Ordered that if a notice from the Clerk of the United States Supreme Court that the Petition for Writ of Certiorari has been filed in that Court is filed with the Clerk of the Supreme Court of South Carolina within the time aforesaid, the Stay of Remittitur and execution of Sentences herein shall continue in effect until final disposition of the case by the Supreme Court of the United States.

G. Dewey Oxner, Associate Justice.

January 8, 1962.

We Consent: John W. Sholenberger, Edward A. Harter, Jr., Attorneys for Respondent.

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 76] Clerk's Certificates to foregoing transcript (omitted in printing).

[fol. 78]

SUPREME COURT OF THE UNITED STATES

No. 90—October Term, 1962

CHARLES F. BARR, et al., Petitioners,

vs.

CITY OF COLUMBIA.

ORDER ALLOWING CERTIORARI—June 10, 1963

The petition herein for a writ of certiorari to the Supreme Court of the State of South Carolina is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.